

Snell & Wilmer
L.L.P.
LAW OFFICES

Gateway Tower West
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101-1547
801.257.1900
801.257.1800 (Fax)
www.swlaw.com

Denise A. Dragoo
(801) 257-1998
ddragoo@swlaw.com

July 10, 2015

Dana Dean
Associate Director
Utah Division of Oil, Gas & Mining
1594 West North Temple
Salt Lake City, Utah 84116

Re: Application for Significant Revision, Hidden Splendor Resources, Inc,
Horizon Mine, C/007/0020

Dear Associate Director Dean:

On behalf of Hidden Splendor Resources, Inc. and Alexander H. Walker, III, beneficiary of the estate which owns the underlying collateral (collectively, "HSR"), we are responding to the inaccuracies and misperceptions set forth in your letters dated June 16, 2015 and June 22, 2015. The letter dated June 16, 2015 returned HSR's permit change application dated May 29, 2015. HSR is seeking to change the post mining land use from undeveloped land to recreational use. Contrary to your letter, HSR submitted a complete application under R645-303-224 and should be allowed to proceed with advertising public notice. The issues raised in the Division's letter are technical and go beyond a completeness check list. See R. 645-303-226; R645-300-121.

HSR also challenges as premature, unwarranted and inaccurate the Notice of Intent to Forfeit Surety and Opportunity to Cure dated June 22, 2015 (NOI). The NOI is premature because HSR is currently conducting reclamation. HSR is amending and resubmitting the application to change the post-mining land use with additional information pursuant to R645 - 301- 413.300. Significantly, effective July 7, 2015, Senator David P. Hinkins and HSR entered into a letter of intent confirming Senator Hinkin's intent to lease the mine site with an option to purchase. Also, an adjoining landowner, not the landowner who previously contacted the Division, is discussing a similar transaction. Exhibit A, Declaration, Alexander Walker III, Esq. The application has been updated to amend Section 4.5 with this information.

The Division's findings which lead to the rejection of HSR's change in post mining land use are inaccurate and this response seeks to set the record straight. Further, your NOI of bond forfeiture is premature as HSR is currently conducting reclamation at the site, has removed surface facilities and structures has replaced temporary seals at the portal and is preparing a plan

C/007/020 Incoming
cc: Steve C,
Steve A.

RECEIVED

JUL 13 2015

DIV. OF OIL, GAS & MINING

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

Dana Dean
July 10, 2015
Page 2

to permanently seal the portal. Further, the Division NOI fails to notify the current property owners of the subject collateral and is inconsistent with the forfeiture procedures set forth at R645-301-880.910-12. See Declaration.

The following addresses the Division's findings:

I. Division's unnecessary finding as to changes in the conditions at the mine or lands surrounding the mine.

Contrary to the Division's finding, a determination as to changes to the surrounding lands is not a condition to approval of a change in land use under R 645-301-413.220. Rather, the post mining land use change is to be "judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining." *Id.* Contrary to the Division's position, the rules do not require that postmining land-use change be "justified" beyond this showing. The Division oversteps its bounds by second-guessing the landowner's future use of its own property.

HRS's application shows that the surrounding land uses support recreational use. Under the County Land Use ordinance, the term undeveloped land includes recreational uses. As set forth at Section 4.5 of the proposed MRP amendment, the Horizon Mine site and adjacent lands are located in Carbon County's "mining and grazing zone" which allows minor recreational uses. Carbon County Code Section 4.2.15(C)(10)(2009). See Declaration and attached photo showing recreational trailers used in the canyon to the east of the mine, and Jerry Carlson's lodge to the northeast of the mine. Mr. Carlson's lodge/cabin has power, water and septic field. He has a maintenance and storage building just off this photo. Also, the county road was improved and paved not only for the mine but to allow increased recreational use in the area. A change in post-mining use from undeveloped land to recreational use is a "higher and better use." See Utah Admin. Code R645-301-413.300. Recreation is consistent with the Carbon County land use goals and development objectives.

HSR has responded to each of the requirements for a land use change under R645-301-413.300(a)-(d) in the proposed revisions to Chapter 4 of the MRP, subsection 4.5.1, 4.5.2 and 4.5.3.

(a) There is a reasonable likelihood for achievement of recreational land use.

There is a reasonable likelihood for achievement of recreational use as per Utah Admin Code R645-301-413.310. The area is currently zoned by the county to for recreational use including, but not limited to, day use facilities, camping, and hunting retreats. See Carbon County Code, Appendix 4-2. The facility pad will accommodate day use facilities such as parking, camping, ATV and equipment storage. Much like the activity which currently takes

Dana Dean
July 10, 2015
Page 3

place on the property just to the west of HRS property. The existing driveway between the County Road and facility pad provides access to the site and surrounding area for recreational use. HSR is negotiating with several parties interested in leasing or owning the Horizon mine site for recreational use. A lease with option to purchase is currently being negotiated by HSR with Senator David P. Hinkins. The letter of intent ("LOI") between the parties has been stamped as "Confidential." HSR requests that this LOI, due to the sensitive terms and conditions, be withheld from public review pursuant to Utah Code Ann. § 63G-2-305 and 309, Government Records Access Management Act. The LOI should be treated as a protected record pursuant to Section 63G-2-305(2) and (9) prepared in connection with a real estate transaction. Another adjacent land owner is also interested in a similar arrangement. This lease option is intended to benefit and generate revenue for HSR and parties with a secured interest in the mine site.

(b) Recreation use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution.

Recreational use is consistent with county ordinances and does not present any actual or probable hazard to public health or safety or present a threat of water diminution or pollution. Indeed, such recreational use and already the norm on property surrounding the HSR property. Retention of existing diversionary structures and the sediment pond will maintain water quality. Flows from Portal Canyon are currently diverted through a culvert (UC-3) under the facility pad and into Jewkes Creek. The culvert ensures that water from portal canyon is not polluted from runoff from previously disturbed areas, as well as from Horizon Mine's runoff. The culvert runs under the entire length of the facility pad. Areas around the sediment pond and ditching have already been revegetated and provide effective runoff control. A separate culvert (UC-1) and ditching diverts runoff water from the disturbed area, access road, and facility pad into the sediment pond. This existing drainage system will preserve water quality downstream and ensure that Jewkes Creek remains free from site runoff and additional sedimentation caused by recreational use.

The Division argues that the culvert may break down over time. However, this concern can be addressed by the new lessee or owner and is not currently an issue. Other civil authorities have ample ability and mandate to assure future protection of natural resources and adjacent land once the Division has completed its statutory role.

(c) Recreation use is consistent with governing laws and policies.

Recreational land use is defined as "land used for public or private leisure time activities including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking canoeing and other undeveloped recreational uses." Utah Admin. Code R645-100.

Dana Dean
July 10, 2015
Page 4

As described above Carbon County code has been revised to accommodate recreation activity within Grazing and Mining zones. The structures to be left in place are permitted under the revised land-use code. More specifically county ordinance identifies water diversion structures, manmade ponds under 10 acre-feet in capacity as permitted uses within Mining and Grazing zones. Campsites, lodges and other recreation support structures are also permitted.

(d) Recreation use will not be impractical or unreasonable, will not involve unreasonable delay in implementation

Recreational use will not be impractical or unreasonable. Consistent with local land use policy, the area is already used for recreational activity including hunting, hiking, camping, biking, and horseback riding. With existing infrastructure in place, the Horizon Mine site is well suited to proposed recreational activities and minor recreation structures. Maintenance of the facility pad, diversion structures, driveway, and sediment pond prevents onsite disturbance. Once revegetation is completed, the site will be ready to support recreational use without additional construction or delays. Virtually all surrounding private land is successfully used for recreation, more than amply demonstrating the practicality of HSR's plan. Whether the owner or a specific potential buyer has the wherewithal to build any particular structure on the HSR property goes well beyond the limits of this particular criterion, which speaks only to reasonableness and practicality. Both of those criteria are amply demonstrated.

II. Division's incorrect findings regarding: HSR's financial condition, ownership of the company and ability to complete reclamation.

The Division's concerns regarding current and future ownership of the property are without either factual or legal basis. Contrary to the Division's letter dated June 16, 2015, HSR is not in Chapter 13 bankruptcy. A Chapter 11 case involving HSR was filed by its principal creditor was dismissed in 2013. HSR's reclamation liability is adequately secured and HSR has achieved significant milestones under its reclamation plan. Also, contrary to the Division's letter, HSR is not a family-owned entity. HSR is a corporation, organized under the laws of the State of Nevada and a wholly-owned subsidiary of America West Resources, Inc., a public corporation with many shareholders. See MRP Chapter 1, Sections 112.300 and 112.400. The Division incorrectly finds that should the property not be leased or sold to a third party, that there will be "no viable landowner." The property remains in HSR, with adequate bond coverage, unless and until it is conveyed by the corporation, whether in the normal course of business or in the process of winding up its affairs. The Division's "no viable landowner" argument is conjecture, at best, and again seeks to adjudicate issues well beyond its statutory mandate.

HSR is proceeding to clean out the sediment pond. As documented by the attached Declaration, HSR has (1) repaired recent portal vandalism, see attached pictures, and (2) work on

Dana Dean
July 10, 2015
Page 5

permanently sealing the portal has begun. In this regard, the “Dog Hole” (the vertical ventilation tube) was sealed per MSHA regulation on Monday, June 22, 2015.

III. The Division’s incorrect finding regarding minimal reclamation work and delay.

Contrary to this finding, HSR has undertaken and completed significant milestones under the reclamation plan. HSR is not delaying reclamation by submitting the permit amendment to change the post mining land use. The recreational post mining land use will simplify reclamation requirements. The change will allow HSR to lease or sell the property for a higher and better use which will benefit HSR and those entities which hold an interest in the mine site property. HSR’s efforts to change the post mining land use have been made after consultation with the Division. HSR and counsel have met with the DOGM on several occasions, received DOGM approval to submit the post mining land use application, amended the application from a minor amendment to a significant permit revision per the Division’s request and had the Division’s agreement to withdrawal of Board proceedings pending these permitting proceedings. See, April 20, 2015, joint stipulation filed with the Board by counsel for both parties.

IV. Premature Issuance of Notice of Forfeiture.

Finally, the Division has acted prematurely and illegally in issuing its notice of reclamation deficiency to the trustee and alleged owners of the property which secures reclamation. The NOI was improvidently issued when reclamation is now being undertaken by HSR. The NOI is premature, while HSR and DOGM are still in negotiations regarding change of the post mining land use and prior to the Division’s compliance with forfeiture procedures set forth at R 645-301-880.910-12. Further, the NOI contains many inaccuracies, including the failure to notify the owner or to acknowledge HSR’s abatement actions or the current status of NOV’s which have been terminated or abated. The Division presents factual allegations which are untrue and/or irrelevant as follows:

1. HSR’s bankruptcy has been dismissed. HSR does not dispute that mining has ceased. The sale and removal of equipment pursuant to court order is consistent with HSR’s reclamation obligation.
2. The BLM is terminating the federal coal lease. The Division is without jurisdiction to enforce the federal Bureau of Land Management’s (BLM) resource recovery and protection plan (R₂P₂).
3. As set forth in the attached Exhibit B, HSR has abated or terminated all but one of the NOV’s referenced by the NOI.

Dana Dean
July 10, 2015
Page 6

4. NOV #10141 will be abated as retention of the sedimentation pond is proposed pursuant to the pending permit amendment. If the permit amendment is not approved, the sediment pond will be removed per the reclamation plan.
5. HSR is submitting a revised permit application which addresses the requirements for a change in post mining land use.

In sum, the Division's actions are arbitrary and capricious and HSR has been damaged, and continues to be damaged, by the Division's conduct. HSR's continuing good faith efforts to reclaim the mine site and to address the Division's permit change requirements are not a basis for bond forfeiture. The Division has repeatedly told HSR to prepare a permit amendment outlining its proposed post mining land use changes, and the Division would consider the merits of the proposal. The Division made this commitment knowing that HSR intended to reduce its reclamation burden, and to use the property for recreational purposes. HSR has spent considerable time and money preparing permit amendments based upon this promise, only to have the Division refuse to consider the merits of the amendments. The refusal, in each case, is based upon an objection to the nature of the future use and reclamation changes that were already disclosed to the Division. In short, we believe that the Division has reneged on its promise to give full and fair consideration to HSR's plans to change the post-mining land use. HSR requests that the Division review the revised application for completeness and allow HSR to provide public notice of the proposed change in post-mining land use.

Very truly yours,

Snell & Wilmer



Denise A. Dragoo

DAD:mkm
Enclosure

cc: Senator David P. Hinkins
Executive Director Michael Styler
America West Resources, Inc.
Metro National Title Company
Estate of Cecil Ann Walker
Alex Walker III
Timothea Kent
Amanda Walker Cardinalli
Dan Baker, Wild West Equipment and Hauling
Steve Alder, Esq.

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of MINE PERMIT AMENDMENT HORIZON MINE, HIDDEN SPLENDOR RESOURCES, INC. CARBON COUNTY, UTAH	Declaration of Alexander H. Walker III Permit No. C/007/0020
---	--

DECLARATION

I, Alexander H. Walker III, declare under penalty of perjury as follows:

I have personal knowledge of each of the facts set forth below and if called upon to do so could and would testify regarding the following. This declaration is submitted in support of Hidden Splendor Resources, Inc.'s application for a Permit Amendment for the Horizon Mine, permit number C/007/0020, in Carbon County, Utah.

1. I am the President of Hidden Splendor Resources, Inc. ("HSR").
2. HSR is a corporation, organized under the laws of the State of Nevada and a wholly-owned subsidiary of America West Resources, Inc., a public corporation.
3. HSR is the permittee of the Horizon Mine, Utah Division of Oil, Gas & Mining coal mine permit C/007/0020.
4. HSR is the owner of the private land located within the boundaries of the Horizon Mine permit area.
5. The mine property held by HSR is subject to interests held by secured parties.
6. I am familiar with the land use and ownership in the immediate area of the Horizon Mine, and am acquainted with several of the landowners.
7. The property adjoining the Horizon Mine property has been used for recreation, including hiking, hunting and camping, for many years.

8. In my numerous trips to the Horizon Mine property, I have observed people camping, riding ATVs, and hiking on parcels surrounding the Horizon Mine property. I also am aware that hunting is popular in the area. I have seen many deer and elk on and around the mine property.

9. The county road accessing and adjacent to the Horizon Mine property was upgraded by Carbon County in 2007 to a paved asphalt surface to accommodate multiple uses and in part to accommodate increasing recreational use in the area.

10. The Google Earth image attached as Exhibit A shows the Horizon Mine property and surrounding areas in October, 2013.

11. The image shows several instances of recreational use less than a mile from the Horizon Mine portal.

12. The image shows vehicles on the parcel to the northwest of the Horizon Mine property. I know these vehicles to be recreational trailers used for camping and hunting. I know that the property on which those trailers are located has been used for recreational purposes since before Hidden Splendor operated in the Horizon in Mine in 2003.

13. The image also shows a hunting lodge or cabin owned by C & H Properties, LLC, on a parcel immediately northeast of the Horizon Mine property. C & H's cabin has a graded parking area, electric power, running water, and a septic field. A maintenance and storage building exists on his property just outside the frame of this image, approximately 1.3 miles from the mine portal.

14. The image also shows the locations where internet users have posted photos of their hiking activities in the canyon just west of the Horizon Mine which either is on Hidden Splendor's property or is adjacent to it. I personally have hiked in the area where those photos were taken and have encountered families with small children hiking there.

15. In my experience with the area, recreational use in the area is common, widespread, and represents the dominant use by property owners near the Horizon Mine.

16. HSR is currently negotiating with two parties who are interested in leasing and or purchasing the property for their recreational use. A letter of intent has been executed between HSR and Senator David Hinkins for a lease with option to purchase the mine site.

17. I have been advised by parties interested in the property that the existing driveway between the County Road and facility pad is necessary to provide access to the site and surrounding area for recreational use.

18. I have also been advised by these interested parties that the currently-existing pad would be of value to their recreation usage as a parking and staging area. For example, I have contacted professional hunting guides who are in the business of setting up recreational hunting

camps and have been informed that the mine property with its large flat pad areas is ideal for such uses.

19. As the Division of Oil, Gas and Mining (Division or DOGM) is aware, HSR had entered into a letter of intent with a principal of C & H Properties who wished to lease or purchase the mine site property for recreation, but C & H Properties declined to pursue the transaction, in part because of uncertainty created by the Division's refusal to consider changes to the reclamation plan to accommodate recreational uses. In fact, C & H Properties on more than one occasion expressed concern over DOGM's position in this regard and it is my understanding that in June of 2015 either DOGM contacted C & H Properties to discuss C & H Properties' involvement in reclamation efforts or C & H Properties contacted DOGM to confirm the termination C & H Properties' interest in property in order to avoid any reclamation involvement. In either event, DOGM's position in this regard clearly caused a change in the potential purchaser/leasee's interest and has deprived Hidden Splendor of that opportunity to put the property into recreational use. Hidden Splendor has been damaged, and continues to be damaged, by DOGM's actions.

20. HSR seeks to lease or sell the private property to one or more of these other parties for their recreational use rather than as undeveloped land. Recreational use is a higher and better use of the mine site than undeveloped land and the change to recreational use will improve the value of the property. The existing driveway, pad and drainage facilities at the mine site add to the value of the property for recreational use and this value will be diminished if the Division requires removal of these improvements.

21. In my capacity as President of HSR, I believe that it is in the best interest of the corporation to market the property for lease or sale for recreational use, and that removing the existing improvements and offering the property as undeveloped land will result in a lower return on this asset for the corporation and secured parties with an interest in this asset.

22. HSR has repaired the mine portal with temporary seals as reflected in the photographs attached as Exhibit B. HSR has sealed the vertical ventilation tube per MSHA regulations as shown in the photograph attached as Exhibit C. MSHA has confirmed that HSR is making a diligent effort in sealing of the Mine Portals and has allowed HSR additional time to complete the project, as confirmed in the MSHA continuation notice dated June 15, 2015, attached as Exhibit D.

Pursuant to Utah Code § 78B-5-705, I DECLARE, under penalty of perjury that the foregoing is true and correct.

Signed on this 10th day of July, 2015, in Salt Lake City, Utah.



EXHIBIT A



EXHIBIT B









EXHIBIT C







EXHIBIT D

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration



Section I--Subsequent Action/Continuation Data

1. Subsequent Action 1a. Continuation <input checked="" type="checkbox"/> <input type="checkbox"/>	2. Dated (Original Issue) 06/15/2015	3. Citation/ Order Number 8483926 - 01
4. Served To Alexander Walker, Officer	5. Operator HIDDEN SPLENDOR RESOURCES INC	
6. Mine HORIZON MINE	7. Mine ID 42-02074	(Contractor)

Section II--Justification for Action

The Operator has made a diligent effort in sealing of the Mine Portals,
additional time has been requested by the Operator to complete the project.

See Continuation Form ☐

Section III--Subsequent Action Taken

8. Extended To	A. Date Mo Da Yr 07/01/2015	B. Time (24 Hr. Clock) 0800	<input type="checkbox"/> C. Vacated <input type="checkbox"/> D. Terminated <input type="checkbox"/> E. Modified
----------------	--------------------------------	--------------------------------	---

Section IV--Inspection Data

9. Type of Inspection E16	10. Event Number 6463015		
11. AR Name Daniel G. Lyons	AR Number 24913	12. Date Mo Da Yr 06/24/2015	13. Time (24 Hr. Clock) 1530